Episode 5

Jim Koerber: The Divorce Recession and Other Financial Concerns

Craig: Welcome to the Robertson and Easterling podcast. Thanks for listening. I'm Craig Robertson

Matt: And I'm Matt Easterling. Craig and I are board certified family law specialists, which means we're basically professional storytellers. Together we run one of the most successful boutique family law firms in Mississippi.

Craig: As divorce attorneys, we are professional problem solvers, who work with real people during the most difficult seasons of their lives and those life stories are what we'll be talking about in each episode.

Matt: So now sit back, relax, take a deep breath. Everything is going to be okay. You found us and what you're about to hear is going to help.

Craig: There are basically three big areas that we deal with in divorce in Mississippi and the first area is the divorce itself. Mississippi is still fault-based state we are one of the very few remaining where fault matters and you can't get a divorce unless you consent to the divorce. The other huge area is children and issues concerning their care, their maintenance, their support, their custody and the final is the financial piece, that is equitable distribution and alimony. For equitable distribution, step one is to identify whether or not an asset is marital or non-marital, step two is to value it, and step three is the division of it and if that's inadequate then we start looking at alimony.

Matt: So, to talk to us today, we have Jim Koerber, who is the founding member of the Koerber Company in Hattiesburg, Mississippi.

Robertson: Jim, why don't you tell us a little bit about yourself and your business?

Jim: Well I'm a CPA, I've been practicing now as a CPA for over 40 years. I'm a business valuator and also certified in financial forensics. I fell into this probably 25 years ago and started my own practice in Hattiesburg, Mississippi in 1997. So, I've been having my own practice for 22 years now and I have our practices made, including myself, of five CPAs. Each have business valuation and forensic accounting credentials and then we have a firm administrator secretary.

Matt: For anybody that is a business owner, or may be married to a business owner, could you talk a little bit about what they might expect as they begin to embark on a divorce as it relates to their business?

Jim: As it relates to their business regarding business valuations, Mississippi is very unique when it comes to valuing a business for divorce purposes. If it's valuing business for any other purposes, there are different standards, different methodologies and so forth. In Mississippi, the only standard that the courts allow is the net asset value, excluding any goodwill for the business or the person, but including any applicable discounts for lack of marketability and lack of control. I'll explain those. The net assets are just basically determining what is the value of the accounts receivable, what is the value of the inventory, what are the debts and so forth. Then whether you own 10 percent or possibly 100 percent, you would look at certain discounts off of that, so it's a very straightforward process. Mississippi is the only state that does it this way, the only.

Matt: And I still don't know why we do it that way, I don't think it's a very accurate representation of what a business is worth but that's what we have to deal with here.

Jim: I agree

Craig: So, help our listeners understand, this is common place for people like you and me who work in marital dissolution in Mississippi. But for example, let's use a dentist office as an example, everybody knows that young dental students buy dental practices from older dentist all the time, is what you're saying the price that people actually pay for practices is not the same as we evaluate them for purposes of divorce?

Jim: Exactly, if somebody was selling their dental practice, they would look at a quote stream of income or what the value of those patient files would be or the location of the dental practice. In Mississippi you exclude all that, you just get down to the chairs, computers, accounts receivable and so forth. That's it. There is no goodwill involved, and the goodwill would be the location, the files, even the phone number could basically represent a goodwill.

Craig: What do you do Jim when, a lot of times, we see in small businesses throughout Mississippi people are basically living out of their business so they might be paying for things that are clearly personal out of a business account. So, how is that taken into consideration when it comes to the value of a business or a person's income?

Jim: Well, you have to address that often but it usually goes to support for alimony and child support. So let's just say a person is saying, states on his return that he's making twenty thousand dollars a year but once you analyze it you find out they are paying for everything from the honey club dues, to vacations, to travel and so forth then really that twenty thousand dollars is… once you add back all those discretionary expenses that they're paying it can get up to quite a bit more so you up to fifty thousand dollars a year and so you're looking at the true earning power of the business for support purposes.

Matt: So, what would be some of the key pieces of information or documents that you would need people to gather or provide to you in order to determine those things?

Jim: As far as forensic accounting goes?

Matt: Yes sir.

Jim: Well looking at personal expenses you would look to bank statements, which is sometimes very clear discretionary expenses, and usually talking to the spouses they will tell you what's been going on. But also, looking at loan documents where they put a personal financial statement for a company and also look at the individual tax returns and see what's going on there and you can do some forensic accounting. And looking at the records of the company, that's a good methodology to follow up to see where all the expenses are being classified. I've seen everything from paying for the child going to college to the girlfriend own the books.

Craig: I tell people all the time that personal financial statements that are submitted to a banker are always inflated and personal financial statements that are submitted to the divorce lawyer are always deflated if you will.

Jim: Oh, it's always terrible, it's a divorce recession.

Craig: Divorce recession. What do you mean by that?

Jim: What I usually see is, let's just say somebody made $300,000 last year, well this year they don't know how they're going to keep the doors open, and sometimes it's true, sometimes they're having a bad year but often it's not the case.

Matt: Well, I think sometimes that can be a perfect storm. It makes sense that a person's productivity or the businesses they're generating may suffer a little bit if they're going through such an emotional ordeal such as a divorce. Obviously, it's very time intensive and so it would make sense that a business may go down a little bit, but I agree with you it seems like every business owner I meet is having the worst year ever as he is you know going into this process.

Craig: Well, the other piece of that is that people fall into rhythms of life and in my life, we have a certain rhythm about who takes the kids to school on certain days, and who picks them up, and who is responsible for taking them to practice, or to appointments or to their social engagements, and there's a disruption of that when it comes to divorce. I'm a solo practicing attorney and my energy creates my income and if my energy was diverted somewhere else during a season of time, then inevitably it would certainly affect my income, but at the same time there are cases that we all see where there is an intentional manipulation of the reality of someone's financial circumstances. I think that's one of the biggest fears that the non-money spouse, the person who doesn't create the income, or the person from whom the financial wealth, has not been garnered.

I think that's one of the biggest concerns they have when they come to us, maybe their spouse is the business owner and you know they have this great lifestyle but also when they come in and they bring a tax return, it's showing relatively minimal income compared to the standard of living that they're enjoying.

Jim: I agree. Sometimes it's a legitimate concern, they have had a bad year if it's a contractor or whatever they may not have gotten the bids that they had received in the prior years. So, they can have some legitimate issues there, but sometimes it's just a way of just slowing things down to try to manipulate the financial picture for the marital estate.

Craig: And that comes down to the credibility of the particular party because, a great example would be if a husband was cheating and then all of a sudden he's saying, “oh yeah and I'm having the worst business year ever”, you're like “well, what's the truth here?”, because you know if he's been lying about this inappropriate extramarital relationship, is he telling the truth about his business? and sometimes you don't know. I've been listening in preparation for this podcast that we're creating and there is no bank of information out there. I mean there's not one tool that divorce lawyers only have access to, or private investigators only have access to, or forensic accountants only have access to. There are the same tools available and sometimes we have to uncover a lot of rocks to really find what's truly going on in a situation.

Matt: The flipside, would be from the non-money spouses’ position. I know I often hear a lot of times “I believe he's hiding money” or “she is paying for something they're not supposed to”. In your experience, how easy is it for a business owner to either hide income or secret away funds?

Jim: It's not easy at all. Do they try sometimes? Yes. Sometimes the suspicion of it is really more speculation than anything with today's computers. Most people work using QuickBooks. You've got bank statements, you got personal financial statements that you've given to banks, you've got loan applications, you've got tax returns. If you get several years back you can start tracing all that information and you can usually find that sometimes there may be situations where they've bought some assets in their brother's name or transferred something to their mother, but most of the time you can find that most of it is accounted for even if they try it you can find it.

Matt: Yes sir, I know that I think another piece of that is a lot of times the non-moneyed spouse maybe just believes that they're making more money than they actually are. And usually a big part of that is that they've been living outside of their means, their expenses are not an accurate reflection of what their income actually is.

Jim: Yeah, I agree. Sometimes it's… I've worked on several before where the non-money spouse said well we've got this great standard of living and I have to tell them it's because they've been borrowing so much money. They're living off the borrowed funds it's not because of anything else.

Craig: This is a great segue into the 8.05 financial declaration. Every time we have a new meeting with a client, we give them a couple of 8.05 financial declarations, and 8.05 just comes from the rule number that requires us to exchange financial statements in a divorce. Talk about the 8.05 financial declaration and its importance in a divorce case in Mississippi.

Jim: When it comes to the 8.05, I've seen too many people put this together at the last minute and really don't think about all the expenses that they incur, it could be inflated, it could be overlooked. The 8.05 is just a key component for all the income, the expenses, the personal expenses, the investments that the individual has, down to personal assets, the car, the house, everything, and it is so important to have an accurate, incredible and defendable report for the 8.05 for the Court to take that in consideration. Because if it isn’t incredible, the other side is going to pick it apart.

Craig: Right. That is, by far and away, the most important piece of evidence in any Mississippi divorce case, more important than a picture of the spouse going into a hotel room, more important than anything, because at the end of the day how your divorce doesn't necessarily impact the rest of your life, but certainly your financial future can.

Matt: And you know to add to that, not only is the actual numbers on the page important, but I believe that filling out a financial declaration correctly can end up having a lot of weight with the court itself; because when courts are able to look at a financial declaration that has been filled out properly, it lends credibility to the witness themselves that they put the effort into it and that the information in it is correct and it has a positive effect on the remainder of their testimony throughout the trial.

Craig: Right, and there are certain ways like, for example, one of the things that we provide as an income statement, basically you know what is the income of the particular person who's walking through the divorce or there are other reasons that a person would have to complete a financial declaration, but you know there are a basic employee of a company then their income is usually pretty straightforward. They have a they have a W-2 and the income component of the financial declaration can basically be copied straight over from that document. However, if someone is self-employed and they have a banner year for example this particular year but it was an anomaly and it was out of the ordinary, then we might want to look at maybe the last three years and then do some averaging or create other creative ways to report income.

Jim: Correct

Matt: So, we've been talking about the financial declaration, I want to you make sure the listeners know like what are the different components of it.

Craig: So, the components of a financial declaration are essentially the income statement, the budget form, the statement of assets, and the statement of liabilities. The income is it's a reporting of the income of the person completing the form. And then the budget statement, there's certainly is an art to the creation of the budget statement, because people who are divorcing are in transition. So you've got the budget of the person with the family intact and then there might be a period of separation where there is a temporary budget, where there might be temporary housing or someone's temporarily living with a family member and it's temporary, and then there is projections with regard to what one's future budget is going to be. So, the 8.05 is not something typically that we do once and that we don't return back to because it truly is in transition.

Jim: Oh absolutely just this week we wrapped up worked with a CPA firm that was updating the 8.05 for one of our clients to make sure everything was up to date because it had changed over time, and the last time it had been prepared was six months ago and I told them they needed a more accurate number to work with.

Cassie: I hope you're enjoying our show, my name is Cassie, my job is to take care of the Robertson Easterling clients. I love helping people. Listen, the lawyers in our office are some of the smartest people I know. I know that you're scared and emotional and that's totally okay but when the plane is going down, it's important to put your oxygen mask on first before you can care for those around you. Request a consultation from our website or just give me a call. Everything's going to be okay I can't wait to meet you but until then sit back, relax and enjoy the second half of today's show.

Craig: Jim, some of our listeners, they're listening to this and their heads spinning a little bit and they're thinking “oh man I don't know what to do with all this financial information” and using words like forensic accounting and business valuation and things like that. So, Jim what words of advice would you have for a person who might have a reasonably complicated financial estate who could be walking through a divorce?

Jim: I think the best place to start is going to see an attorney familiar with family law. A lot of these terms regarding business valuation, forensic accounting, marital versus separate property, income tax planning, probably will give a lot of pause to many individuals going through divorce. But an attorney can sit down and explain these terms because they are experts in this area of law.

Matty: Well, not all attorneys are created equally Jim, as we all know, what are your thoughts on that. If, let's say your younger sister unfortunately was walking through a divorce in Mississippi, and I know you know lots of attorneys, what advice would you give to someone who might be facing a divorce on how to even start to find an attorney?

Jim: Well, since I know so many, I could tell them who to go see but I would sit down with them and say “listen, this is what you're going to be facing you've got to start with the attorney first that's the coach who's going to help you through this whole process” and to maybe contact the Bar Association to find those who have expertise in this area. That attorney who is knowledgeable in family law can then sit down with you and decide on what is needed, what is not needed and then turn around and also bring in a financial expert if needed, a real estate appraiser which might be needed and so forth. And also, a CPA that may be able to help you with the 8.05 and income tax planning. So that's very key.

Matt: So, you know I think that you have very interesting perspective being, in some instances, almost a third-party observer to these divorces. And, you know, we like to say all the time that we think that this is a "get what you pay for business", but in your experience, do you felt like you've seen a start difference between people that actually invest in their attorney, as opposed to folks who maybe tried to go at it from a different direction.

Jim: Oh, absolutely. I've seen individuals deciding, "well I'm going to sit down with my spouse and we'll work all this stuff out" and usually that never works.

Matt: So, one of the components that we talked about of the financial declaration, is the budget or the expenses section, in my experience most people they come in have very little concept of what their actual monthly expenses are. Do you find that people think their expenses are higher than they are, lower than they are or am I wrong that most people do have an idea of what their expenses are?

Jim: I found that most people believe certain expenses are higher than they are and then they tend to overlook some very crucial expenses and not include those on the 8.05, such as maybe the repairs to the vehicle, or dental insurance, or something else that they're just not thinking about right away.

Craig: Yeah, I think the routine expense is that a person pays you know an electricity bill, water bill, a daycare expense, a private school tuition, those are recurring ongoing expenses but I think the things that people leave out are those annual expenses, they only pay them once a year or you know it's not top of mind and so it's pretty important wouldn't you agree that people go back and look at their credit card statements, look at their actual bank statements and even if they don't come to a number that is mathematically certain that they have at least reviewed several years of expenditure statements such as a bank statement or a credit card statement to determine the budget.

Jim: Oh, I think that's important because as I've always told individuals going through a divorce, I said 'the 8.05 is basically your one shot to make sure that you've got everything on there" and it is accurate. Too many times I see people put down "well I've spent $300 a month for utilities", well I know good and well that's just an estimate if they looked at it they may find out that it's you know four hundred and twenty-five dollars a month or more so they need to take time meet with a CPA, their CPA if the CPA feels like they have a conflict find another CPA to do it for them.

Matt: Yeah and I guess on a lighter note, I find it funny, I feel like the stock answer that comes in on the expense portion for a monthly clothing budget is $50 and you know I don't know where all these people are getting their clothes, but I can guarantee that they are spending more than $600 a year you know on their clothing.

Craig: One thing I want to talk to you a little bit about, Jim, and some of our listeners might be hearing this and their head is spinning a little bit and they're like look I'm struggling to pay for day care expenses, or maybe they live a more extravagant lifestyle, but yet you know they're not super liquid, but what advice would you give with regard to that? Someone's like “well I can't afford a forensic accountant or I can't afford an attorney who charges $400 an hour” and so they almost acquiesce to the process or the process happens to them, because they don't feel like they have the associated resources. I tell people we represent people not companies and so sometimes we have to pick and choose what we can do, we might not be able to afford to depose you know five employees that work for a particular business owner, we might not be able to bark up every potential tree for lack of a better way to communicate it.

Jim: Well, I've had that situation come up before where basically the non-money spouse wanted me to travel all over the country to look at different locations and so forth and I said “I'm not going to spend $200 to find $20, what you have to do is look at the major items to make sure that’s what you need”. So, you're just spending your money wisely, if you say you can't afford something well let's see what you can afford as far as this goes. You want to get you know good legal representation, but as far as forensic accounting you may not want to go and just look at every transaction for the last 10 years, you might just want to look for the last three or you may want to look at financial statements that have been presented that may show a different type of income and lifestyle that is being reported on the money spouses 8.05.

Matt: You know talking about the major components of a divorce, you know one of the pieces of the financial portion is support or alimony, I know recently there have been some changes to the tax laws that affect alimony. Jim, can you tell us what effects those changes in tax laws have had on support?

Jim: Well, for many-many years the person paying the alimony was able to deduct it as a tax deduction and the person receiving it had to pay taxes on that. Under the new tax law that's now in effect today and going forward, you can no longer deduct it and its no longer income to the person receiving it. So, with that you have to be careful that you take that into consideration when you're planning out the amount needed to support the individual. In a way it makes it a little easier for the spouse receiving the money but by the other standard, the individual paying it may find it a little more difficult, so you've got to sit down with the CPA knowledgeable in income taxes and work that out.

Craig: Right, so the idea is used to the higher income earning spouse who was responsible for paying alimony could take the alimony being paid off the top of the income and what would not be taxed on it whereas the person receiving the income or alimony, would pay taxes on that, but what has happened with the tax law changes they totally eliminated basically income shifting between formerly married folks, is that correct?

Jim: Correct.

Craig: So again, you know I like to draw, I'm a very visual guy. The listener can imagine with me, you know a divorce is kind of like on a continuum, a time line if you will. So, the date of the marriage is typically the day that marital property starts to be created, and marital property is all about energy right, if I'm using my energy and I'm creating income and from that I'm creating wealth then I'm creating marital property. So, it's all about energy. And things that are not a result of my energy they might have been things that I had before we got married, they might have been things that came into the marriage by gift or inheritance or non-marital by their very nature but Jim it's not really that easy is it? Could you talk around a little bit marital versus non marital property and how that affects people in divorce in Mississippi?

Jim: I'll be glad to. This ends up getting very complex very quickly. An individual who owned a business at the start of the marriage will claim that that is separate property at that point, but any appreciation of that business during the marriage, like you said, using their energy to build the wealth, can be deemed marital, so you want to know what the value was at the beginning of the marriage, what the valuation is at the date of demarcation as far as the end of the marital estate.

Craig: Right and so that's another, it's not a common misconception but common question would be, okay, if our marital estate started the date that we got married, when does it end? And the answer to that question is it kind of depends right?

Jim: It depends on what the court decides, when the line of demarcation is.

Craig: Yeah and when we say line of demarcation, that means the date that the marital money stops accumulating right?

Jim: Correct.

Craig: And we find this a lot of times in sometimes second marriages where someone comes in… a lot of times people get married for the first time in their 20s, they don't have anything. I mean sometimes they do but most of the time they don't and so where this comes into play a lot of times would be in a second marriage situation. Where an older person might have been married for six or seven years and they came into that relatively short marriage with a relatively substantial estate. Is that correct?

Jim: Correct and at that point it's very important to sit down and document this. The hardest thing is when the marriages lasted 20 or 25 years to go back and look at what was there at that start of the marriage, and you're right it can come from inheritance, it can come from gifts, it can come from other resources and sometimes you have to get into all kinds of elaborate forensic accounting for tracing these items.

Craig: Right, and not to not to get into something super complex as we're trying to wrap up today's episode, but I mean we are in Mississippi and so there's a lot of family businesses and generational wealth that has to be considered with regard to business valuation and what is truly the makeup of a marital estate.

Jim: Exactly, and you're right it can get very complex very quickly but sitting down with an attorney that's knowledgeable in family law to discuss what is marital versus separate, what are the issues that you're facing, is just very important.

Matt: So, if you're a business owner and you're unfortunately going through a divorce, I know sometimes as a business is being divided, usually the business owner is going to retain that asset after the divorce and is going to pay a certain amount of value to their spouse. What are the ways that that you see people typically able to fund paying that distribution to the spouse?

Jim: It can be different items, different methods or there are several alternatives, if the court decides a certain percentage of the businesses or the value of the business is to go to the non-money spouse, sometimes it's paid out over a period of time out of the cash flows of the business or it can be funds borrowed to pay out to the non-money spouse.

Craig: I think that's a common misconception, one of the things that we try to educate people about is how getting down to the division piece, remember that as far as equitable distribution we are identifying or valuing or dividing and so there's common misconceptions around how division happens because it's like “oh we have a business then we'll split the business”, “oh we have a house, we must sell the house and divide that”, “oh we have four financial accounts, we must divide each and every one of them”. That's not necessarily how division in divorce in Mississippi works. Is it Jim?

Jim: No, an attorney years ago told me just remember equitable does not mean equal you know it can be done in different alternatives.

Matt: Right and to add to that, I think that a lot of people they like to look at it on individual items. So like you said if there's a business, I want 50% of the business, if there's a house I want 50% of the value of the house, and they usually, the more practical way to do it, is to identify everything that is marital and then figure out how what things can we put in each person's column to make it roughly equal.

Jim: Correct, you don't want to just destroy the business, you want to make sure that each party comes out with what is equitable, what is fair to both parties.

Craig: Right, I'm a 20-year veteran now of doing this stuff and one thing I've learned is that every cliché you've ever heard in your life is true, and there's a reason we don't kill the goose laying the golden eggs is because we want them to keep laying those eggs, right Jim?

Jim: Absolutely.

Craig: And Jim how would someone get in touch with you if they wanted to touch base with you about your professional services?

Jim: They can always just call our office 601-583-1000

Craig: Y'all are online I assume, the website?

Jim: We have a website and it's the koerbercompany.com

Matty: Okay and Koerber is spelled?

Jim: k-o-e-r-b-e-r

Craig: Yeah and man you look fantastic, 40-year veteran still knocking it out and thanks a lot for being with us today it means a lot that you take the effort to come up from Hattiesburg and spend time with us.

Jim: Well I appreciate it too. Thank you.

Craig: Thank you.

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